

DAVID BURCHARD  
CHAPTER 13 TRUSTEE  
P.O. BOX 8059  
FOSTER CITY, CA 94404  
(650) 345-7801 FAX (650) 345-1514  
(707) 544-5500 FAX (707) 544-0475

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re:

Evette F. Minor  
1252 Poplar Street  
Santa Rosa, CA 95407

Debtor(s)

Chapter 13  
Case No: 10-11883 AJ13  
Date: October 12, 2011  
Time: 1:30 PM  
Ctvm: U.S. Bankruptcy Court  
99 South E. Street  
Santa Rosa, CA 95404

**MOTION OF CHAPTER 13 TRUSTEE, DAVID BURCHARD,  
TO DISMISS CASE PRIOR TO CONFIRMATION**

TO: THE ABOVE-NAMED DEBTOR(S) AND TO DEBTOR(S)' ATTORNEY OF RECORD HEREIN:

The Chapter 13 Trustee, DAVID BURCHARD, moves the Court for an order, dismissing this case for cause(s) for the reasons set forth below.

1. This Court has jurisdiction over this matter pursuant to Federal Rules of Bankruptcy Procedure 9013 and 9014, and Bankruptcy Local Rules 9013-1 and 9014-1. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A).
2. This Motion is based upon all documents and records on file, together with this Motion, Declaration and any such additional documents, records and evidence which can be presented.
3. Debtor(s) filed for bankruptcy under Chapter 13 on May 18, 2010.
4. This motion for dismissal is made for cause pursuant to 11 U.S.C. §1307(c)(1).
5. Cause to dismiss this case exists as it is in the best interests of creditors and the bankruptcy estate. The Trustee therefore requests the Court enter an order dismissing this case.

If you wish to oppose dismissal of this Chapter 13 case, you or your attorney must file a timely opposition to this motion no later than fourteen (14) days before the hearing set forth in the accompanying Notice of Motion. You or your attorney must also appear at the hearing date listed in the notice and present argument in opposition to this motion.

DATED: September 9, 2011

DAVID BURCHARD  
DAVID BURCHARD, Chapter 13 Trustee

DAVID BURCHARD  
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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re:

Evette F. Minor  
1252 Poplar Street  
Santa Rosa, CA 95407

Debtor(s)

Chapter 13  
Case No: 10-11883 AJ13  
Date: October 12, 2011  
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Ctrm: U.S. Bankruptcy Court  
99 South E. Street  
Santa Rosa, CA 95404

**DECLARATION IN SUPPORT OF CHAPTER 13 TRUSTEE,  
DAVID BURCHARD'S, MOTION TO DISMISS CASE  
PRIOR TO CONFIRMATION  
AND CERTIFICATE OF MAILING**

I am the custodian and/or keeper of the business records referenced herein and, as such, I am qualified to certify the authenticity thereof. Additionally, I have personal knowledge of the matters stated in the Declaration. If called upon as a witness, I could, and would, competently testify to the facts contained herein.

After reviewing the books, records and files of the above-referenced Debtor(s), I make the following Declarations:

1. Debtor(s) filed the instant bankruptcy petition on May 18, 2010.
2. As of the date hereof, the following fact(s) exists as cause for dismissal:

_____	Failure to make required payments to the Trustee as due under Chapter 13 Plan.
_____	Failure to attend Section 341 Meeting of Creditors scheduled on ____.
<u>  X  </u>	Failure to respond to Trustee's requests made at least 30 days prior – see attachment.

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was executed on September 9, 2011 in Foster City, California.

Dated: September 9, 2011

DAVID BURCHARD

DAVID BURCHARD, Chapter 13 Trustee

## CERTIFICATE OF MAILING

I am over the age of 18 years and not a party to this action. I am employed by the Trustee whose business address is 393 Vintage Park Drive, Suite #150, Foster City, CA. On the date set forth below, I served a true and correct copy of the **Motion** of Chapter 13 Trustee, David Burchard, to Dismiss Case Prior to Confirmation, the **Declaration** in Support of Chapter 13 Trustee, David Burchard's Motion to Dismiss Case Prior to Confirmation and **Certificate of Mailing**, on the persons listed below by following our ordinary business practice for service, which is either deposited in the ordinary course of business with the U.S. Postal Service by first class mail or served by electronic transmission from the Court, if applicable. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Evette F. Minor  
1252 Poplar Street  
Santa Rosa, CA 95407

Evan Livingstone  
740 Fourth Street. #215  
Santa Rosa, CA 95404

Dated: September 9, 2011

LILIAN TSANG  
LILIAN TSANG

DAVID BURCHARD  
CHAPTER 13 TRUSTEE  
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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SANTA ROSA DIVISION**

In re:

Evette F. Minor  
1252 Poplar Street  
Santa Rosa, CA 95407

Debtor(s)

Case No.: 10-11883 AJ13  
Chapter 13

**ATTACHMENT TO TRUSTEE'S MOTION TO  
DISMISS, PRE-CONFIRMATION**

The Trustee made the following requests at least 30 days prior to the filing of the instant motion:

1. Trustee requested a ***signed*** copy of Debtor's 2007 and 2008 Federal Income Tax Returns for Debtor's business. Debtor has failed to provide the returns.
2. Debtor's plan does not meet the requirements of U.S.C. §330(c). Debtors have proposed a monthly plan payment of \$20.00 for the first month. U.S.C. §330(c) provides that the "compensation paid to the trustee serving in the case shall not be less than \$5 per month." In this jurisdiction, Trustee receives estimated 10% of all funds disbursed, which dictates that the minimum monthly plan payment must be \$50.00. Debtor has failed to file an amended plan.
3. The Debtor's plan does not meet the requirements of 11 U.S.C. §1325(d) as the plan payment is insufficient to pay all priority and administrative claims, and therefore, the plan is not feasible. The source of the non-feasibility appears to result from the following factor: Franchise Tax Board is not scheduled in Debtor's plan, however, said creditor has filed a priority proof of claim in the amount of \$9,140.86 and unsecured amount of \$14,745.72. The Trustee requests that Debtor's counsel amend the plan to provide for said claim, or, in the alternative, file an objection to said claim. Debtor has failed to address these claims.
4. Debtor's amended form B22C fails to reflect Business income in Question 3. The Trustee requested clarification or an amended form B22C. Debtor has failed to file amended schedules.
5. Schedule I lists Debtor's monthly net income in the amount of \$2,750.00, while Schedule J lists monthly expenses in the amount of \$2,980.00. The Trustee questions the feasibility of the debtor being able to make plan payments under these circumstances. 11 U.S.C. §1325(a)(6) provides that a plan cannot be confirmed if the debtor is unable to make plan payments. Debtor has failed to file amended schedules.

6. Questions 1 and 2 of the Statement of Financial Affairs calls for income information year-to-date as well as for the two years immediately preceding the filing of the petition. Debtor has failed to list her year-to-date income information. Trustee requested an amended response to questions 1 and 2, which provides this information. Debtor has failed to file amended schedules.
7. Schedule I lists the Debtor as self-employed, however, the Statement of Financial Affairs Question 18 is answered none. The Trustee requests that Debtor's counsel amend the Statement of Financial Affairs that includes questions 18 through 25. Debtor has failed to file amended schedules.